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In re Application
Presta, et al.
Application No. 10/027,736
Filed: December 19, 2001
Patent No. 6,911,321
Issued: June 28, 2005

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed August 16, 2005. Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred eighty-three (283) days to four hundred three (403) days.

The application for patent term adjustment is **GRANTED**.

The Patent Term Adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **four hundred three (403) days**.

On June 28, 2005, the above-identified application issued into patent No. 6,911,321. The patent stated that the patent term adjustment (PTA) is two hundred eighty-three (283) days. On August 16, 2005, patentees timely submitted an application for patent term adjustment, asserting that the correct number of days of PTA is four hundred three (403) days.

Patentees point out that they were improperly assessed applicant delay of one hundred twenty (120) days for previously filing an application for patent term adjustment on June 15, 2004.

The Office determined a patent term adjustment of two hundred eighty-three (283) days based on an adjustment for PTO delay of three hundred thirteen (313) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1) and two hundred fifty-three (253) days pursuant to 35 U.S.C. 154(b)(1)(A)(iv) and 37 C.F.R. §1.703(a)(6), reduced by Applicants' delays of one hundred twenty (120), forty (40), and three (3) days pursuant 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b) and one hundred twenty (120) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(10). The adjustment of 120 days pursuant to 37 C.F.R. § 1.704(c)(10) is at issue.

Pursuant to 37 C.F.R. § 1.704(e), the submission of an application for patent term adjustment will not be considered a failure to engage in reasonable efforts to conclude prosecution of the application.

In view thereof, the correct determination of patent term adjustment at the time of issuance of the patent is **four hundred three (403) days** (566 (313+253) days of PTO delay, reduced by 163 (120+40+3) days of applicant delay).

Receipt of the \$200.00 fee set forth in 37 C.F.R. §1.18(e) is acknowledged.

The application file is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction, indicating a Patent Term Adjustment of **four hundred three (403) days**.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin Ferriter
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Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Draft Certificate of Correction